

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LISTER HARRELL,

Petitioner,

v.

1:15-cv-2235 -WSD

HOMER BRYSON,

Respondent.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Janet F. King’s Final Report and Recommendation [3] (“R&R”) which considers Petitioner Lister Harrell’s (“Petitioner”) “Petition for Writ of Habeas Corpus” [1]. Also before this Court is Petitioner’s Application to Proceed *In Forma Pauperis* [2] (“Application”). The Magistrate Judge recommended that the action be dismissed because Petitioner did not intend to file a federal habeas petition.

I. BACKGROUND

On June 19, 2015, the Clerk of Court received a letter written by Petitioner regarding a mandamus action Petitioner wished to institute in the Superior Court or Magistrate Court of Fulton County, Georgia, to compel the Commissioner of the Georgia Department of Corrections to properly credit Petitioner with time served.

([1] at 1-2). Attached to Petitioner's letter was his "Petition for Writ of Mandamus" directed to the "Superior/Magistrate Court of Fulton County, State of Georgia." (Id. at 3-5). The Clerk of Court docketed Petitioner's letter and petition for a writ of mandamus as a federal habeas petition.

On June 29, 2015, the Magistrate Judge issued her R&R, finding that Petitioner intended to file his petition for writ of mandamus in the Superior Court or Magistrate Court of Fulton County, Georgia, and did not intend to initiate a federal habeas action. (R&R at 1-2). Because Petitioner did not intend to initiate a federal habeas petition, the Magistrate Judge recommended that this action be dismissed. Petitioner did not object to the R&R.

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982), cert denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). With respect to those findings and

recommendations to which a party has not asserted objections, the district judge must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

Petitioner did not object to the Magistrate Judge's R&R. The Court thus reviews the Magistrate Judge's findings and recommendations for plain error. See Slay 714 F.2d at 1095.

B. Analysis

A review of the letter submitted by Petitioner and his petition for writ of mandamus clearly evinces his intent to file his mandamus petition in either the Superior Court or Magistrate Court of Fulton County, Georgia.¹ That Magistrate Judge recommended dismissing this action because Petitioner did not intend to file a federal habeas action. The Court finds no plain error in Magistrate Judge's findings and recommendation that this action be dismissed. See Slay, 714 F.2d at 1095.

¹ Petitioner appears to have mistaken the Court, physically located in Fulton County, Georgia, for the Superior Court or Magistrate Court of Fulton County, Georgia.

III. CONCLUSION


For the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Janet F. King's Final Report and Recommendation [3] is **ADOPTED**.

IT IS FURTHER ORDERED that Petitioner Lister Harrell's Application to Proceed *In Forma Pauperis* [2] is **GRANTED**.²

IT IS FURTHER ORDERED that this action is **DISMISSED**.

SO ORDERED this 28th day of March, 2016.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE

² The Application is granted for the purpose of considering the "Petition for Writ of Habeas Corpus."